

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

LLOYD E. ALLEN,)	4:14CV3197
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
MICHAEL L. KENNEY,)	
)	
Respondent.)	
)	

This matter is before the court on the parties' motions to dismiss. For the reasons discussed below, the court will provide Petitioner Lloyd Allen ("Petitioner") until December 1, 2014, to object to dismissal of this action. If no objection is filed, the court will dismiss this matter without prejudice.

On September 30, 2014, Petitioner filed a Petition for Writ of Habeas Corpus (Filing No. [1](#)) in this matter in which he challenged his 2011 conviction in Sarpy County, Nebraska, for terroristic threats with a habitual criminal enhancement. On October 16, 2014, Respondent filed a Motion to Dismiss or Consolidate (Filing No. [8](#)). Respondent argued this case should be dismissed or consolidated because Petitioner already has a habeas corpus action pending in this court—Case Number 4:14CV3049—in which he challenges the same judgment of conviction. On October 27, 2014, Petitioner Lloyd Allen mailed to this court a "Motion to Dismiss" (Filing No. [10](#)) in which he asks "this court to dismiss his Case No. 4:14-CV-3197 at this time."

Pursuant to [Fed. R. Civ. P. 41](#), a plaintiff may dismiss an action by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment, or by filing a stipulation of dismissal signed by all parties who

have appeared. [Fed. R. Civ. P. 41\(a\)\(1\)](#). In addition, a court may grant a request for voluntary dismissal “on terms that the court considers proper.” [Fed. R. Civ. P. 41\(a\)\(2\)](#).

The court finds that dismissal of this action without prejudice is proper. However, Allen’s motion seeking dismissal is a photocopy, not the original document. Thus, out of an abundance of caution, the court will provide Plaintiff until December 1, 2014, to object to dismissal. If no objection is filed, the court will dismiss this matter without prejudice.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until December 1, 2014, to file an objection to the dismissal of this matter.
2. The Clerk of the court is directed to set a pro se case management deadline in this matter with the following text: December 1, 2014: Deadline for Plaintiff to file objection.

DATED this 28th day of October, 2014.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge

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